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State v. Baay Appellant's Reply Brief Dckt. 47236

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 47236-2019**
	)	
v.	)	**ADA COUNTY NO. CR01-19-7095**
	)	
CHRISTOPHER DIRK BAAY,	)	**APPELLANT'S REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE THOMAS J. RYAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

On appeal, Christopher D. Baay challenged the district court's imposition of a ten-year sentence, with five years fixed, because the district court misunderstood the requirements of the persistent violator sentencing enhancement, I.C. § 19-2514. The district court believed the statute required a mandatory minimum sentence of five years fixed, but the statute requires only a unified minimum sentence of five years. The State responds that the district court did not misunderstand the statute and, in support, references the statements made by the district court and the parties at the sentencing hearing. The State also contends any misunderstanding the applicable law for the discretionary sentencing decision was harmless. Mr. Baay now replies, and he respectfully disagrees with the State's assertions.

Statement of Facts and Course of Proceedings

The statement of facts and course of proceedings were articulated in Mr. Baay's Appellant's Brief. They are not repeated here, but are incorporated by reference. (App. Br., pp.1–4.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Baay to ten years, with five years fixed, based on its misunderstanding that the persistent violator statute required at least five years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Baay To Ten Years, With Five Years Fixed, Based On Its Misunderstanding That The Persistent Violator Statute Required At Least Five Years Fixed

Mr. Baay respectfully disputes the State's proposed reading of the district court's and parties' remarks at sentencing. Contrary to the State's position, the district court's statements demonstrate its misunderstanding of the persistent violator statute. Three exchanges illustrate the district court's misinterpretation.

First, the district court thanked the parties for their "clarification" after it had stated its belief that the State's recommendation of two years fixed plus six years indeterminate was "illegal." (*See* Tr. Vol. II,[1] p.30, L.7–p.32, L.8.) The parties' "clarification" included the State's response that "district court judges here in Ada County view" the persistent violator statute "differently." (Tr. Vol. II, p.30, Ls.17–25.) The minority group, including the presiding judge here, believed it must impose at least five years fixed. (Tr. Vol. II, p.30, Ls.20–23.) The majority believed it must impose at least five unified years. (Tr. Vol. II, p.30, Ls.23–25.) The State did not offer its opinion on the differing views and instead remarked the question was "interesting." (Tr. Vol. II, p.30, Ls.17–18.) Mr. Baay's "clarification" was in line with the majority view, and he added the district court could retain jurisdiction or suspend the sentence, as long as the underlying sentence was at least five unified years. (Tr. Vol. II, p.31, L.7–p.32, L.6.) "By the end of" this exchange, the State contends, the district court "must have understood the law" that it did not have to impose five years fixed. (Resp. Br., p.5.) While it may be true that the district court,

[1] There are four separate transcripts on appeal: (1) the preliminary hearing, held on March 11, 2019; (2) a motion hearing, held on May 14, 2019; (3) the one-day trial, held on May 22, 2019; and (4) the sentencing hearing, held on July 23, 2019. The preliminary hearing and motion hearing transcripts are not cited herein. Citations to Volume I will refer to the trial transcript, and citation to Volume II will refer to the sentencing hearing transcript.

and the parties, agreed the district court could retain jurisdiction or suspend the sentence, nothing about this exchange indicates the district court identified the proper interpretation of the persistent violator statute. To be sure, the district court recognized the different views, but the district court never stated it was changing or modifying its understanding. Moreover, the prosecutor never "advised" the district court of her understanding of the statute. (*See* Resp. Br., p.5.) The prosecutor left the matter open for interpretation, and the district court simply thanked the parties for expressing their views. The district court never said it had revised its view that a sentence of less than five years fixed was "illegal."

Second, the district court acknowledged the majority and minority views, but expressed its adherence to the minority position. Although quoted in Mr. Baay's Appellant's Brief, the district court's statement bears repeating: "Now, I understand that there may be a difference of an opinion with regard to **how to allocate the time** on a persistent violator. **But I have always taken the view that it is a minimum of five years**." (Tr. Vol. II, p.37, Ls.3–7 (emphasis added).) The State not only relegates this statement to a footnote, but also contends the district court's view is "not clear". (Resp. Br., p.6 n.1.) Mr. Baay respectfully disagrees. The district court was clear—it believed it must impose a mandatory minimum of five years fixed. This is evident from the district court's first sentence identifying the different opinions on "how to allocate time," its qualification to "always" taking "a minimum of five years,"[2] *and* its preceding statement that it believed a sentence of less than five years fixed was "illegal." (*See* Tr. Vol. II, p.30, Ls.7–16.) Once again, the district court never stated it was now changing its view of the

[2] Also as noted in Mr. Baay's Appellant's Brief, the district court expressed the same view at the trial, thus confirming its view. (App. Br., p.2 n.2.) At the trial, when Mr. Baay admitted to two prior convictions for the enhancement, the district court advised him that "the maximum penalty" was "no less than five years and up to life . . . ." (Tr. Vol. I, p.340, Ls.15–21.)

statute. Rather, the district court recognized contrasting views between the district court judges and chose to continue with the minority interpretation of five years fixed.

Third, the district court's finding to "need[ ] to add more time" does not indicate a sudden shift in its interpretation. Mr. Baay agrees with the State's position that the "add more time" statement referenced the prosecutor's recommendation of eight years, with two years fixed. (Resp. Br., p.6.) Yet that is where the agreement ends. The State contends the "add more time" statement means the district court believed it had discretion to increase the fixed time from two years to five years. (Resp. Br., p.6.) Mr. Baay submits this is not the only interpretation. It is equally reasonable that the district court's "add more time" statement referenced the prosecutor's overall recommendation of eight years. Further, by taking into consideration the district court's prior statements on its understanding of the statute, it is unlikely the district court was suddenly changing its view without actually saying as much. If the district court intended to sentence Mr. Baay to five years fixed not because the statute mandated it, but because it believed it was the appropriate sentence, the district court would have been explicit in those intentions, in light of the prior discussions. The "add more time" statement does not resolve the district court's misunderstanding of the persistent violator statute.

Next, Mr. Baay responds to the State's assertion of harmlessness. In *State v. Ish*, 161 Idaho 823 (Ct. App. 2014), also cited by the State, (Resp. Br., p.6), the Court of Appeals discussed the harmless error standard for discretionary decisions:

> Ordinarily, when a discretionary ruling has been tainted by a legal or factual error, we vacate the decision and remand the matter for a new, error-free discretionary determination by the trial court. However, the remand may be avoided where it is apparent from the record that the result would not change or a different result would represent an abuse of discretion.

Ish, 161 Idaho at 826 (citations omitted). Hence, in *Ish*, when the district court had erroneously found the persistent violator applied to the defendant, the Court of Appeals was "not convinced beyond a reasonable doubt" that the erroneous finding "did not affect the sentence imposed by the district court." *Id.* The Court of Appeals recognized the persistent violator enhancement "broadened the district court's sentencing options." *Id.* The Court of Appeals then explained, "The parties discussed the persistent violator enhancement at the sentencing hearing and the district court did not clearly articulate the extent to which it affected the sentence imposed, if at all." *Id.* The Court of Appeals contrasted these facts with another persistent violator case, *State v. Medrain*, 143 Idaho 329, 333 (Ct. App. 2006). In *Medrian*, the Court of Appeals held the district court's error in finding the persistent violator enhancement was harmless because the district court explicitly stated the enhancement was a "nonissue" and disregarded it. *Id.* However, in *Ish*, because the parties discussed it, and the district court did not explain the enhancement's influence on its decision, the Court of Appeals ruled the defendant was entitled to a new sentencing hearing. 161 Idaho at 826.

Similar to *Ish*, the State has not proven, beyond a reasonable doubt, that the district court's misunderstanding of the persistent violator statute "did not affect the sentence imposed." *Id.* While the district court's misinterpretation of the statute restricted, rather than "broadened," its sentencing options, the effect on the district court's sentence is the same. The district court did not explicitly disregard the enhancement. *Medrain*, 143 Idaho at 333. The "parties discussed" it, *Ish*, 161 Idaho at 826, and the district court believed it was bound by it in making its decision. If the district court believed a five year fixed sentence was mandatory, it cannot be said that this error did not contribute to the district court's sentencing decision.

Finally, even if the district court "did not articulate" the influence of the enhancement, "if at all," the error would still not be harmless. *Id.* To this end, the State claims: "There is no indication in the record that the district court would have imposed a lesser fixed sentence if it was aware of its discretion to do so." (Resp. Br., p.7.) That is exactly the point. There is also no indication in the record that the district court would have imposed five years fixed if the statute did not mandate it. Simply put, there is no indication of discretion on the fixed term. The only reasonable interpretation of the district court's remarks is that it imposed five years fixed because the statute mandated it, and it imposed five years indeterminate "to add more time" for deterrence. The State has not proven the error was harmless.

CONCLUSION

Mr. Baay respectfully requests this Court vacate his sentence and remand his case for a new sentencing hearing.

DATED this 9th day of June, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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